No. 91-1326

In the Supreme Court of the United States

OCTOBER TERM, 1991

THE DISTRICT OF COLUMBIA
AND SHARON PRATT KELLY, MAYOR,
Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONERS

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), this Court unanimously ruled that the Employee Retirement Income Security Act ("ERISA") does not preempt state disability insurance laws protecting employees insofar as these laws permit employers to comply with them by establishing an employee benefit plan that is separate from their ERISA-covered employee benefit plans. The issue presented for review is whether, despite *Shaw*, ERISA preempts a state workers' compensation law which requires employers, who provide health insurance to their active employees, to provide equivalent benefits to employees injured on the job even though (1) ERISA treats workers' compensation laws just like disability insurance laws and (2) the workers' compensation law at issue permits employers to comply with it by establishing an employee benefit plan separate from their ERISA-covered employee benefit plans.

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

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OPINIONS BELOW

The November 15, 1991, decision of the United States Court of Appeals for the District of Columbia Circuit is reported at 948 F.2d 1317. Cert. Pet. App. 1a-20a. The March 27, 1991, decision of United States District Court for the District of Columbia in Civil Action No. 91-00511 is not reported. Cert. Pet. App. 21a-29a.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The petition for a writ of certiorari in this case was filed on February 14, 1992, following the denial of a timely petition for rehearing by the court of appeals on January 10, 1992.

STATUTORY PROVISIONS INVOLVED

This case involves both the Employee Retirement Income Security Act of 1974 ("ERISA"), 88 Stat. 829, as amended.

29 U.S.C. § 1001 *et seq.*, and the District of Columbia Workers' Compensation Equity Amendment Act of 1990 ("Equity Amendment Act"), D.C. Law 8-198, codified in scattered sections of D.C. Code Ann. §§ 36-301 to -342.1 (1981 ed. 1988 repl. 1991 supp.). The relevant text of these provisions is reproduced in the appendix to the petition for a writ of certiorari. Cert. Pet. App. 32a-34a.

STATEMENT OF THE CASE

I. INTRODUCTION.

This case raises important issues about the extent to which ERISA restricts the power of the District of Columbia, and the States, to require employers to provide benefits to employees, such as health insurance for themselves and their families, as part of workers' compensation. The court below has held that ERISA precludes the District from requiring employers to provide health insurance benefits to employees who suffer on-the-job injury, illness, or death, whenever these benefits are set by reference to what employers agree to provide their active employees. It has done so even though workers' compensation laws typically set wage-replacement benefits by reference to such employer-employee agreements and even though the provision of health insurance may be an important component of an employee's compensation package.

The District of Columbia believes that this decision is wrong. ERISA does not preclude it, or the States, from enacting workers' compensation laws to ensure that employers, who are in the best position to avoid on-the-job harm to employees, provide an adequate safety net to employees who suffer work-related injury, illness, or death. This safety net may include health insurance to employees who, as active workers, receive such insurance as part of their compensation package. Without this safety net, employees who suffer on-the-job harm, as well as their families, may be forced

to forego needed medical treatment or, if treatment becomes unavoidable, the public may be forced to pay for it.

Indeed, the court below acknowledged that there is nothing in ERISA that prevents the District from correcting what it believes to be such unwise and unfair results. It erred, however, in ruling that ERISA precludes the District from setting this portion of its workers' compensation benefits in the traditional way — by reference to the health insurance benefits received by active workers as a result of agreements with their employers.

II. THE DISTRICT OF COLUMBIA'S WORKERS' COMPENSATION LAW.

The District of Columbia's workers' compensation law requires virtually all employers in the District to compensate their employees who suffer work-related injury, illness, or death, for loss of income and for disability; and it also requires employers to provide medical services and supplies for any such injury or illness. See D.C. Code Ann. § 36-301 *et seq.* (1981 ed. 1988 repl. 1991 supp.).[1] This law is the exclusive remedy available to employees against their employers for such work-related harms. See D.C. Code Ann. § 36-304.

In 1990, the Council of the District of Columbia amended its workers' compensation law by enacting the District of Columbia Workers' Compensation Equity Amendment Act of 1990, D.C. Act 8-261. Following approval by the mayor on October 24, 1990, and the expiration of the congressional review period, the Equity Amendment Act became effective

[1] The Act defines "employer" broadly to include any individual or entity "using the service of another for pay within the District of Columbia," (D.C. Code Ann. § 36-301(10) (1981 ed. 1988 repl.)), and excludes from coverage only a few categories of employees, including "casual employees." See D.C. Code Ann. § 36-301(9) (1981 ed. 1988 repl.); § 36-303(a-2) (1981 ed. 1988 repl. 1991 supp.).

on March 6, 1991. D.C. Law 8-198. See Notice, 38 D.C. Reg. 1752 (1991).[2]

The Act requires employers, who provide health insurance to their employees, to provide equivalent health insurance, for up to 52 weeks, to employees who are receiving, or who are eligible to receive, workers' compensation under the District's workers' compensation law. It states:

> (1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter. . . .
>
> (3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

D.C. Code Ann. § 36-307(a-1) (1991 supp.).

III. ERISA.

ERISA is a complex federal statute designed to ensure that employees are not unfairly deprived of pension and other employment-related benefits promised by their employers. To achieve this goal, ERISA imposes a number of obligations on employers and, as a corollary of federal regulation, preempts, with important exceptions, state legislation relating to employee benefit plans. For example, ERISA reserves to the states the power to enact legislation governing subjects traditionally within their purview, such as legislation providing benefits to employees pursuant to workers' compensation, unemployment compensation, and

[2] The District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, § 602(c)(1), 87 Stat. 774, 814 (1973) (codified as amended at D.C. Code Ann. § 1-233(c)(1) (1981 ed. 1991 repl.), requires the Council of the District of Columbia to transmit an act to Congress after approval by the mayor. The act becomes law within thirty legislative days unless Congress disapproves it by a joint resolution.

disability insurance laws, as well as legislation governing insurance, banking, and securities.[3]

ERISA does not mandate substantive benefit terms. Instead, ERISA's central provisions require employer-sponsored employee welfare benefit plans — plans providing for medical and similar benefits or for "benefits in the event of sickness, accident, disability, death or unemployment" — to comply with federal standards governing reporting, disclosure, and fiduciary responsibility.[4] 29 U.S.C. §§ 1021-1031, 1101-1114. ERISA also requires employer-sponsored pension benefit plans to comply with those standards; in addition, such pension plans must comply with federal standards regulating participation, vesting, and funding. 29 U.S.C. §§ 1051-1086. To ensure compliance with its requirements and with employer promises made in the plans it governs, ERISA contains a comprehensive enforcement scheme. *E.g.*, §§ 502 & 510, 29 U.S.C. §§ 1132 & 1140.

As a corollary of federal regulation of employee benefit plans, ERISA preempts state laws that "relate to" such plans, subject to a number of important exceptions. Section 514(a) of ERISA, 29 U.S.C. § 1144(a), states that "*[e]xcept as provided in subsection (b) of this section,*" ERISA

> shall supersede any and all State laws *insofar* as they may now or hereafter *relate to any employee benefit plan described in section 1003(a)* [§ 4(a)] of this title and *not exempt under section 1003(b)* [§ 4(b)] of this title.

[3] Section 3(10) of ERISA, 29 U.S.C § 1002(10), defines the term, "State," as including the District of Columbia.

[4] Section 3(1) of ERISA, 29 U.S.C. § 1002(1), defines an employee welfare benefit plan as including "any plan, fund, or program . . . established or maintained by an employer . . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . .."

(Emphasis added). Section 4(a), 29 U.S.C. § 1003(a), defining "Coverage," states in pertinent part: *Except as provided in subsection (b) of this section . . .*, this subchapter [, governing reporting, disclosure, and the like,] shall apply to any employee benefit plan if it is established or maintained — (1) by any employer engaged in commerce or in any industry or activity affecting commerce . . .." (Emphasis added). Section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3), in turn, provides:

> (b) The provisions of this subchapter shall not apply to any employee benefit plan if —
>
> (3) *such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws . . . .*[5]

The exemptions from preemption of greatest importance to this case are two. First, ERISA expressly authorizes state workers' compensation, unemployment compensation, and disability insurance laws. Under sections 4(b)(3) and 514(a) of ERISA, employee benefit plans maintained solely for the purpose of complying with such laws are exempt from ERISA's disclosure, reporting, and fiduciary requirements, as well as from its enforcement provisions, and are subject to state regulation.

Second, ERISA contains a limited exemption from preemption for state laws regulating insurance, banking, and securities. Section 514(a), 29 U.S.C. § 1144(a), states that ERISA supersedes state laws relating to employee benefit plans "[e]xcept as provided in subsection (b) of this section." Subsection 514(b), one of the "saving" provisions of the ERISA preemption clause, provides in paragraph (2)(A): "Except as provided in subparagraph (B), nothing in this sub-

[5] (Emphasis added). Section 4(b), 29 U.S.C. § 1003(b), also renders ERISA not applicable to employee benefit plans that are government plans ((b)(1)); church plans ((b)(2)); plans maintained outside the United States for nonresident aliens ((b)(4)); and unfunded excess benefit plans ((b)(5)).

chapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A). Subparagraph (B), 29 U.S.C. § 1144(b)(2)(B), the "deemer" provision, prohibits states from, *inter alia*, characterizing employee benefit plans as insurance and thus as subject to state insurance regulation.

IV. THE PROCEEDINGS BELOW.

A. The District Court.

Almost immediately after the District's Equity Amendment Act became effective, the Greater Washington Board of Trade, a not-for-profit corporation which provides health insurance to its employees, brought an action in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1331. The Board of Trade sought a declaration that the Equity Amendment Act is preempted by ERISA and an injunction against its enforcement; the District responded by moving to dismiss the complaint for failure to state a claim.

The Honorable Louis F. Oberdorfer ruled that ERISA did not preempt the District's amendment of its workers' compensation law. In so ruling, Judge Oberdorfer relied principally upon two cases: (1) *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), in which this Court held that a state disability benefits law, requiring employers to provide benefits to women disabled from working because of pregnancy, was not preempted by ERISA; and (2) *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1415 (1991), in which the Second Circuit, interpreting *Shaw*, ruled not preempted a state workers' compensation statute on which the District's Equity Amendment Act was modeled. Cert. Pet. App. 22a-26a. In Judge Oberdorfer's view, the Equity Amendment Act, like the disability benefits law in *Shaw*, and the workers' compensation law in *Donnelley*, "related to" employee welfare benefit plans covered

by ERISA. Cert. Pet. App. 22a-23a & 25a. However, the Equity Amendment Act was not preempted for that reason, because that Act, like the statutes in *Shaw* and *Donnelley*, permits employers to comply by establishing an employee benefit plan, separate from their ERISA-covered plans, solely for the purpose of complying with a state statute protected by section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3). Cert. Pet. App. 25a-26a. As a consequence, Judge Oberdorfer denied the Board of Trade's motion for declaratory and injunctive relief and granted the District's motion to dismiss. Cert. Pet. App. 30a.

B. The Court of Appeals.

The United States Court of Appeals for the District of Columbia Circuit reversed. Cert. Pet. App. 1a. According to the court of appeals, if a state law "relates to" an ERISA-covered plan, it can be saved from preemption only if it is a law, such as a law governing insurance, saved by section 514(b) of ERISA, 29 U.S.C. § 1144(b). Cert. Pet. App. 10a, 13a. Here, the Equity Amendment Act relates to ERISA-covered plans by tying the Act's coverage and benefit levels to those established by employers' ERISA-covered plans; and the Equity Amendment Act is not a law encompassed by the saving clause of section 514(b). Cert. Pet. App. 11a-13a. The Equity Amendment Act was therefore preempted even though employers could comply with the Act by establishing and maintaining a plan separate from their ERISA-covered plans. Cert. Pet. App. 15a.

In so ruling, the court acknowledged that *Shaw* "found that where the [state] law gives employers the option of establishing a separate benefit plan that is exempt from ERISA coverage under section 4(b), such a law would not be preempted." Cert. Pet. App. 11a-12a. The court ruled, however, that *Shaw* was distinguishable because, in its view, "the state law in *Shaw* related only to an employee disability

insurance plan" exempt from ERISA, and not "to an ERISA-*covered* plan." Cert. Pet. App. 12a (emphasis supplied by court). Thus, "[t]he plan to which the . . . Disability Benefits Law related *was* exempt, so the law did not even qualify at the threshold for preemption." Cert. Pet. App. 12a-13a (emphasis supplied by court). According to the court, "[h]ad the Equity Amendment Act related only to the workers' compensation plan — had it, for example, made no reference to existing ERISA-covered plans and simply required all employers to provide specified minimum health benefits for employees receiving workers' compensation — it would clearly have survived preemption under the principles announced in *Shaw*." Cert. Pet. App. 12a.

In its opinion, the court of appeals expressly declined to follow the Second Circuit's decision in *Donnelley* even though it recognized that "[t]he statute at issue in *Donnelley* is indistinguishable from the Equity Amendment Act" and that the Second Circuit in *Donnelley* had ruled, based on *Shaw*, that the state statute, on which the District had modeled its Equity Amendment Act, was not preempted by ERISA. Cert. Pet. App. 15a.

Finally, the court of appeals examined the policy and purpose of ERISA. Thus, Congress, in enacting ERISA, was concerned that " '[a] patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them.' " Cert. Pet. App. 16a, quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987). By way of illustration, and in express contradiction of its earlier ruling that the law in *Shaw* did not relate to ERISA-covered plans, the court of appeals explained that Congress'

> concern for minimizing the burden on the administration of ERISA-covered plans is reflected in the decision of the [Supreme] Court in *Shaw*, where it held

> that *the Disability Benefits Law was preempted to the extent that it applied to benefits provided under a multibenefit plan*: "An employer with employees in several States would find its plan subject to a different jurisdictional pattern of regulation in each State, depending on what benefits the State mandated under disability, work[ers'] compensation, and unemployment compensation laws."

Cert. Pet. App. 16a (emphasis added), quoting *Shaw*, *supra*, 463 U.S. at 107.

In the case of the Equity Amendment Act, the court of appeals determined that it "could have a serious impact on the administration and content of the ERISA-covered plan." Cert. Pet. App. 17a. The court failed to identify, however, what potential burden the Equity Amendment Act places on the administration of ERISA-covered plans and held that preemption would be required even if there were no such impact because the Act could have an impact on employer decisions whether to provide health insurance benefits to employees and the level of such benefits. Cert. Pet. App. 18a, citing *Standard Oil Co. v. Agsalud*, 633 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981). This potential impact, according to the court, meant that the District was impermissibly attempting "to regulate indirectly" what it was "forbidden to regulate directly"— the provision of health insurance benefits to employees pursuant to plans covered by ERISA. Cert. Pet. App. 18a.

SUMMARY OF ARGUMENT

The opinion of the court of appeals in this case is in conflict with this Court's unanimous decision in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). In *Shaw*, this Court held that the state laws referenced in ERISA's section 4(b)(3), such as state disability insurance and workers' compensation laws, are not preempted by ERISA, even if they "relate to" ERISA-

covered plans, so long as these laws require or permit employers to furnish state-mandated employee benefits by establishing a plan separate from their ERISA-covered employee benefit plans. The District's Equity Amendment Act meets this test because it permits employers to furnish the health insurance benefits it mandates as part of workers' compensation by establishing a plan separate from their ERISA-covered plans.

The Second Circuit in *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1415 (1991), correctly interpreted *Shaw*. It ruled that ERISA permits states to enact workers' compensation laws like the District's Equity Amendment Act so long as employers are permitted to comply with such laws by establishing an employee benefit plan separate from their ERISA-covered plans.

By contrast, the D.C. Circuit's conflicting decision is seriously flawed. It errs: (1) in reading *Shaw* as involving a section 4(b)(3) state law that did not "relate to" ERISA-covered plans; (2) in ruling that a section 4(b)(3) state law is preempted whenever it "relates to" such plans because section 4(b)(3) laws are not included in ERISA's section 514(b) saving clause for general state insurance statutes and the like; (3) in emphasizing ERISA's general purpose of avoiding subjecting employers to differing state laws in view of the fact that ERISA expressly exempts from preemption state workers' compensation laws; (4) in charging that the District is attempting to regulate indirectly what it may not regulate directly even though, under the Equity Amendment Act, employers remain free to include or not to include whatever benefits they want for active employees in their ERISA-covered plans, including health insurance benefits; and (5) in failing to understand that a law like the Equity Amendment Act does not differ, for ERISA purposes, from a workers' compensation law establishing employer-paid health insurance benefits set without reference to what employers provide to their active employees.

This Court should reverse the decision of the court below on the ground that, even if the Equity Amendment Act "relates to" ERISA-covered plans in the manner identified by that court, it is nevertheless not preempted under *Shaw* because employers may establish a plan solely for the purpose of complying with the Act. In addition, to avoid future confusion in the lower courts, this Court should also rule that the Act does not "relate to" ERISA-covered plans for the reason given by the court below.

Based on its misunderstanding of *Shaw*, the court below has ruled preempted the District's easily administered workers' compensation law but it has authorized the District to enact a less easily administered law that sets workers' compensation benefits without reference to what employers provide their active workers. In its view, the Equity Amendment Act "relates to" an ERISA-covered plan merely because it sets workers' compensation benefits by reference to benefits provided under ERISA-covered plans, and thus is preempted, whereas the law the court below authorizes would not "relate to" such plans. This decision bears no relationship to the concerns that prompted ERISA.

The overbroad definition of "relate to" adopted by the court below to strike down the Equity Amendment Act was not formulated in light of the principles of federalism that ordinarily inform this Court's judgment in ERISA preemption cases and in light of the language, structure, and purposes of ERISA. When ERISA's preemption language is interpreted in this framework, it becomes clear that a state law should not be held to "relate to" ERISA-covered plans merely because the law expressly refers to benefits provided by such plans in setting benefits to be provided pursuant to an otherwise valid state law. Indeed, this Court has never so held.

Instead, as this Court's ERISA-preemption cases indicate, a state law should be said to "relate to" ERISA-covered plans only if (1) it deals "with the subject matters covered by ERISA — reporting, disclosure, fiduciary responsibility, and the like;" (2) it affects the content or administration of ERISA-covered employee benefit plans in a manner that offends the language or purposes of ERISA; or (3) it conflicts with other provisions of ERISA; such as its exclusive enforcement scheme. *Shaw*, *supra*, 463 U.S. at 98. This definition of "relate to" protects the federal concerns that prompted ERISA regulation of designated employee benefit plans; eliminates the threat of inconsistent non-federal regulation of ERISA-covered employee benefit plans; and strikes a proper balance between those considerations and Congress' plain purpose not to displace unnecessarily traditional and legitimate exercises of state power and authority.

ARGUMENT

I. THE DECISION BELOW IS IN CONFLICT WITH THIS COURT'S DECISION IN *SHAW* MANDATING A TWO-STEP APPROACH IN ANALYZING ERISA PREEMPTION OF WORKERS' COMPENSATION LAWS.

In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), this Court unanimously ruled that ERISA does not preempt state legislation requiring employers to provide disability benefits to employees to the extent that such legislation permits employers to comply by establishing an employee benefit plan administratively separate from their ERISA-covered plans. At issue in *Shaw* was a state law which required employers to pay monetary benefits for up to 26 weeks in any one-year period to employees unable to work because of pregnancy or other non-occupational disability, and which tied the level of benefits required to an employee's wages. The disability benefits law was challenged by employers who had employee benefit plans subject to ERISA which did not include all the benefits mandated by the state law.

In *Shaw*, this Court took a two-step approach in determining whether the state law was preempted by ERISA: "The issues are whether the [state laws] . . . 'relate to' employee benefit plans within the meaning of § 514(a), . . . and, if so, whether any exception in ERISA saves them from preemption." *Id.* at 96.[6] According to this Court, "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Id.* at 96-97. At the same time, however, it stated that "[s]ome state actions may affect [ERISA-covered] employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.* at 100 n.21.

This Court ruled that "the Disability Benefits Law plainly is a state law relating to employee benefit plans." *Id.* at 106. The law required employers to provide employee welfare benefits within the meaning of section 3(1) of ERISA (see *supra* at 5 n. 4), and, indeed, some employers subject to the law voluntarily provided some disability benefits pursuant to ERISA-covered plans. *Id.* at 92. Furthermore, the state urged that it had the power to regulate any portion of an employer's ERISA-covered plan that was designed to comply with its disability law. *Id.* at 107.

As a consequence, whether the law was preempted depended on whether "the plans to which it relates are exempt from ERISA under § 4(b)." *Id.* at 106. More specifically, because the state law at issue was an employment-related disability insurance law, preemption turned on the meaning of section

[6] *Shaw* also involved the validity of a state human rights law prohibiting employment discrimination, including discrimination in employee benefit plans, on the basis of pregnancy. This Court ruled that this law was preempted insofar as it prohibited practices by ERISA-covered benefit plans that were lawful under federal law; this Court also ruled, pursuant to section 514(d) of ERISA, 29 U.S.C. § 1144(d)(4), a provision which saves other federal laws from preemption, that the state human rights law was not preempted to the extent that it prohibited practices that were also prohibited by federal law.

4(b)(3) of ERISA, which exempts from ERISA coverage employee benefit plans " 'maintained solely for the purpose of complying with applicable [workmen's compensation laws or unemployment compensation or] disability insurance laws.' " *Id.*, quoting 29 U.S.C. § 1003(b)(3).

This Court identified two problems in resolving this issue. First, some of the employers affected by the state law had multibenefit plans governed by ERISA that provided benefits not required by the state law; and the state had urged that it could regulate any parts of such plans which provided the benefits required by its law. *Id.* at 106-07. This was problematic because the plans exempted from ERISA under section 4(b)(3) encompass only plans "maintained solely" to comply with the designated state laws. "The test" for determining this matter, this Court ruled, is "whether the plan, as an administrative unit, provides only those benefits required by the applicable state law." *Id.* at 107. Thus, because there cannot be mutually exclusive pockets of federal and state jurisdiction within a plan, "[o]nly separately administered disability plans maintained solely to comply with the Disability Benefits Law are exempt from ERISA coverage under § 4(b)(3)." *Id.* at 108.

The second problem confronting this Court in *Shaw* was to prevent employers from evading lawful state regulation of employee welfare benefits pursuant to workers' compensation, unemployment compensation, and disability insurance laws by the expedient of adopting multibenefit plans subject to ERISA that combine benefits inferior to those required by state law with other benefits. To keep from making enforcement of these state laws "impossible," a result "Congress surely did not intend," this Court held in *Shaw* that such laws are not preempted by ERISA so long as they give employers the option of complying with them by establishing plans that are administratively separate from their ERISA-covered plans. *Id.* at 108. In a key passage, this Court articulated the central principle governing ERISA preemp-

tion of state workers' compensation, unemployment compensation, and disability insurance laws as follows:

> A State may require an employer to maintain a disability plan complying with state law as a separate administrative unit. Such a plan would be exempt under § 4(b)(3). The fact that state law permits employers to meet their state-law obligations by including disability insurance benefits in a multibenefit ERISA plan . . . does not make the state law wholly unenforceable as to employers who choose that option.
>
> In other words, *while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan.* If the State is not satisfied that the ERISA plan comports with the requirements of its disability insurance law, it may compel the employer to maintain a separate plan that does comply.

Id. at 108 (emphasis added). As applied to the disability benefits law, this Court held that the state could not enforce the law by requiring employers to alter their ERISA-covered plans and that the law was *preempted* to that extent. This Court also held that the law *was not preempted* to the extent that it required a separate plan, or gave employers the option of establishing a separate plan, to comply with its terms.

Given this Court's rulings in *Shaw* that the disability benefits law was preempted in part and not preempted in part, it is apparent that *Shaw* rests on two fundamental principles. First, *Shaw* recognizes that benefits required by workers' compensation, unemployment compensation, or disability insurance laws are, *by definition*, employee welfare benefits within the meaning of section 3(1) of ERISA, 29 U.S.C. § 1002(1), that is, "benefits in the event of sickness, accident, disability . . . or unemployment." As a consequence, such state laws necessarily will "relate to" ERISA-covered employee welfare benefit plans. Second, to avoid pre-

emption of all state laws governing workers' compensation, unemployment compensation, and disability benefits — a result Congress plainly did not intend in view of ERISA's express preservation of such laws — *Shaw* allows states to enact such laws so long as these laws require or permit employers to comply by establishing an employee benefit plan separate from their ERISA-covered plans. To rule otherwise would allow employers to evade compliance with workers' compensation, unemployment compensation, and disability insurance laws by establishing an ERISA-covered employee welfare benefit plan combining benefits not required by state law with benefits inferior to those required by state law.[7] In short, the fact that a state law described in section 4(b)(3) of ERISA "relates to" ERISA-covered plans is not necessarily fatal.

Like that part of the disability benefits law held not preempted in *Shaw*, the District's Equity Amendment Act does not require employers to alter their ERISA-covered employee welfare benefit plans. Instead, it simply provides that employers, otherwise subject to the District's workers' compensation law, who provide health insurance to active employees, shall provide equivalent health insurance to employees who receive, or who are eligible to receive, other workers' compensation benefits. Furthermore, the Equity Amendment Act permits employers to comply with its terms by establishing a plan that is administratively separate from their ERISA-covered plans. As this Court ruled in *Shaw*, there is no preemption bar to this Act. Instead, the Act is well within the workers' compensation laws that Congress expressly declined to preempt in ERISA.

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[7] Had *Shaw* not construed ERISA in this manner, employers could have triggered ERISA preemption of workers' compensation laws by, for example, including as part of their ERISA-covered multibenefit welfare plans a provision granting employees disabled by on-the-job injury or illness wage-replacement benefits inferior to those required by such state laws.

II. THE SECOND CIRCUIT IN *DONNELLEY*, NOT THE COURT BELOW, CORRECTLY APPLIED *SHAW*.

A. The Second Circuit in *Donnelley*.

In *Donnelley*, the Second Circuit correctly ruled that ERISA does not preempt a workers' compensation law requiring employers, who provide health insurance to their employees, also to provide equivalent benefits to employees eligible to receive workers' compensation. In so ruling, the Second Circuit recognized that, under *Shaw*, the statute "related to" ERISA-covered employee welfare benefit plans. Indeed, one of the employers who challenged the state statute provided in its ERISA plan for up to 104 weeks of health insurance for employees receiving workers' compensation. 915 F.2d at 790.

However, the statute was not preempted pursuant to *Shaw's* interpretation of the exemption from preemption for state laws governing employee benefit plans maintained solely for the purpose of complying with state workers' compensation, unemployment compensation, or disability insurance statutes. Furthermore, the Second Circuit found significant the "caveat" in *Shaw* that ERISA should not be construed to allow employers to circumvent such state laws by establishing ERISA-covered employee benefit plans combining benefits inferior to those required by state law with other benefits not required by state law. 915 F.2d at 793. Although R.R. Donnelley's ERISA-covered plan provided health insurance benefits to employees disabled by on-the-job harms, these benefits were not provided for as long a period of time as that mandated by the state law.

The Second Circuit also distinguished its earlier decision in *Stone & Webster Eng'g Corp. v. Ilsley*, 690 F.2d 323 (1982), *aff'd mem. sub nom., Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983), in which it had ruled preempted a state statute requiring employers who provide health insurance to their active employees to provide equivalent health insurance to injured workers. That earlier statute was different,

the Second Circuit ruled, because, *inter alia*, it required employers to provide such benefits by altering their ERISA-covered plans and did not give them the option, found critical in *Shaw*, of establishing a plan solely for the purpose of complying with the workers' compensation law. 915 F.2d at 789.

B. The Decision of the Court Below.

The decision of the court below squarely conflicts with *Shaw* and this Court's other decisions in a number of respects:

1. The court of appeals ignored *Shaw's* holding that state legislation encompassed by section 4(b)(3) of ERISA is not preempted, even if it "relates to" ERISA-covered plans, insofar as employers may comply with such laws by establishing employee benefit plans solely for that purpose. Instead, it erroneously interpreted *Shaw* as merely ruling that the New York disability insurance law was not preempted because the law did not "relate to" ERISA-covered plans.[8] The error in interpreting *Shaw* is apparent upon further examination of its opinion. Thus, the court of appeals elsewhere in its opinion described *Shaw* as holding that "the Disability Benefits Law was preempted to the extent that it applied to benefits provided under a multibenefit plan" subject to ERISA. Cert. Pet. App. 16a.[9] Yet the court failed

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[8] The ruling of the court below is particularly surprising in view of the fact that it discussed (Cert. Pet. App. 2a n.1, 10a) this Court's later decision in *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724 (1985), where this Court described *Shaw* as a case "where we held that the . . . State's Disability Benefits Law 'relate[d] to' welfare plans governed by ERISA." *Id.* at 739.

[9] This description is, however, somewhat inaccurate. The basic ruling in *Shaw* was that the disability benefits law was not preempted. 463 U.S. at 109. However, this Court made clear that New York could not enforce this law by compelling employers to alter their ERISA-covered plans or by regulating state-mandated benefits it permits employers to provide in their ERISA-covered plans. At the same time, however, employers could not evade the requirements of the state law by establishing multibenefit plans. They had to comply with the law either by including the state-mandated

[Footnote continued on next page]

to appreciate the significance of its description: the New York law would not have been preempted by ERISA to any extent unless it had related to ERISA-covered plans. As a consequence, the court below also failed to recognize that the New York law was not totally preempted even though it related to ERISA-covered plans.

2. The court of appeals erroneously ruled that, because ERISA does not list workers' compensation laws in its "saving" clause (§ 514(b)), along with state insurance laws, workers' compensation laws are preempted whenever they "relate to" ERISA-covered plans. The fact that the preemption provision of ERISA, section 514(a), incorporates a saving clause for state insurance and other laws, does not negate the statutory exemption from preemption in section 514(a) for laws, such as workers' compensation and disability insurance laws, that require or permit employers to establish plans exempt from ERISA coverage by virtue of section 4(b)(3). Indeed, this Court in *Shaw* described both "[s]ections 4(b)(3) and 514(b)" as provisions "which list specific exceptions" to preemption. 463 U.S. at 104.

3. The court of appeals erred in stating that the District has impermissibly "tried to regulate indirectly what" it is "forbidden to regulate directly." Cert. Pet. App. 18a. To the contrary, all that the Equity Amendment Act does is to require employers, who provide health insurance to their active employees, to provide equivalent health insurance, for up to 52 weeks, to their employees entitled to workers' compensation. This requirement is imposed on virtually all employers in the District of Columbia, including employers,

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benefits in their ERISA-covered plans or by establishing plans solely for the purpose of complying with the law. Finally, if New York was not satisfied that an employer's ERISA-covered plan complied with state law, New York could require the employer to provide the state-mandated benefits in a separate plan subject to state regulation.

such as the District itself and churches, whose general employee welfare benefit plans are exempt from ERISA pursuant to sections 4(b)(1) and (2), 29 U.S.C. §§ 1004(b)(1) & (2). See *supra* at 3 n.1 & 6 n.5. Furthermore, in the case of employers whose general employee welfare benefit plans are subject to ERISA, the Equity Amendment Act does not require them to alter such plans to provide health insurance benefits to employees eligible for workers' compensation, and it does not purport to regulate the benefits provided by such plans or the administration of such plans. Under the Equity Amendment Act, employers remain free to alter their ERISA-covered plans as they deem appropriate, and employers may comply with this Act by establishing a plan separate from their ERISA-covered plans, *i.e.*, a plan established solely for the purpose of complying with the Equity Amendment Act.

Nor does the possibility that the Equity Amendment Act may have some impact on employers' decisions concerning employees' compensation packages, including health insurance, or may increase their administrative costs convert this permissible law into an impermissible indirect regulation of ERISA-covered plans. Thus, even a workers' compensation law, like that approved by the court below — in which the state sets standards of eligibility and levels of compensation without regard to what employers are providing to their active employees — might cause employers to reevaluate their employee compensation packages, including benefits provided by ERISA-covered plans. This would be true whether such plans provided no health insurance benefits to injured workers, 30 days of such benefits, or even 104 weeks of such benefits. In addition, such a statute would cause employers administrative difficulties as great as, or even greater than, those caused by the Equity Amendment Act. For example, under the law approved by the court of appeals, employees would likely have available to them two different insurance packages, one for active workers and another for injured workers, a matter likely to cause em-

ployee confusion and greater administrative costs. Such a statute would not, of course, be preempted by ERISA, however, so long as employers could comply with it by establishing an employee benefit plan separate from their ERISA-covered plans.

4. The emphasis of the court of appeals on section 514(a)'s purpose to avoid subjecting employers to differing state laws is misplaced. Workers' compensation benefits have long been subject to state regulation and, in fact, have varied from state to state. Furthermore, as *Shaw* itself demonstrates, even with ERISA, employers properly may be faced with differing state law obligations, imposed by statutes regulating matters such as workers' compensation and nonoccupational disability. As this Court noted in the case of state insurance laws, "disuniformities [in employer obligations to provide employee benefits] . . . are the inevitable result of the congressional decision to 'save' local insurance regulation." *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 747 (1985). That observation applies with equal force to Congress' decision not to supersede all state laws governing workers' compensation and similar employee-protection laws. Because Congress expressly has allowed the States and the District of Columbia to require employers to provide employee benefits pursuant to section 4(b)(3) state laws, disuniformities in this area are inevitable.

Even under the analysis of the court of appeals, moreover, an employer could be subject to differing state workers' compensation laws requiring health-insurance benefits. Thus, that court would permit the District to require employers to provide for up to 52 weeks of comprehensive health insurance for workers injured on the job so long as its law did not expressly refer to benefits provided by ERISA-covered plans. At the same time, it would permit another jurisdiction to require employers to provide, for the entire period of an employee's job-related disability, a different health insurance package. Indeed, as the court of appeals acknowledged, even with ERISA, a multi-state employer properly could be subject to 50 different state workers' compensation laws providing for wage replacement and other benefits, including health insurance, as well as a District of Columbia law. Preemption would not be authorized by Congress despite the administrative difficulties and costs that would be faced by employers in administering 51 different exempt workers' compensation plans.

Given what the court below acknowledged is permitted by ERISA, there is no sound reason to attribute to Congress an intent to preempt the less intrusive and more easily administered workers' compensation law enacted by the District of Columbia. This law does not compel employers to alter their ERISA-covered plans to provide the benefits it requires. Instead, as *Shaw* expressly authorizes, employers are given the option of altering their ERISA-covered plans to provide such benefits, if they are not already provided, or to establish a plan separate from their ERISA-covered plans to provide such benefits.

5. The court of appeals erred in ruling that the Equity Amendment Act is different, for ERISA purposes, from a workers' compensation law that sets health insurance benefits for injured employees without reference to health insurance benefits provided by employers pursuant to their ERISA-covered plans. First, in the context of this case, the concerns of ERISA are implicated only because the District, pursuant to its workers' compensation law, is requiring employers to provide employee welfare benefits. The concerns of ERISA are not implicated because, in requiring such benefits, the District has selected one method rather than another of determining the benefits to be provided under its workers' compensation law. Indeed, the court of appeals has turned the concerns of ERISA upside down — in its view, the concerns of ERISA are not implicated by the District's requirement that employers provide benefits but are implicated only by the method the District has selected to estab-

lish eligibility for benefits and to calculate the level of benefits to be provided. However, because the District may require workers' compensation benefits, the particular method it selected to determine these secondary matters is irrelevant to ERISA and too "peripheral" to the concerns of ERISA "to warrant a finding" that this aspect of the Equity Amendment Act " 'relates to' " an ERISA-covered plan. *Shaw*, *supra*, 463 U.S. at 100 n.21. See also Part III, *infra*, at 25-36.

In light of the foregoing, there is no basis for holding that ERISA precludes the District from taking into account — with the precision of the Equity Amendment Act — the economic realities of the employment relationship and the economic realities of the losses an employee may suffer when he is disabled from working by a job-related injury or illness. First, wages of employees may vary depending on whether health insurance is part of their compensation package. Second, wage-replacement benefits provided under laws protected by section 4(b)(3) are customarily set by reference to wages paid to active employees pursuant to agreements with their employers. See 2 A. Larson, Workmen's Compensation Law § 60.00 (1992) ("The normal unit by which [wage-replacement] benefits are measured consists of a fixed statutory percentage, usually between one-half and two-thirds, of 'average weekly wage.' "); *Shaw*, *supra*, 463 U.S. at 89 (observing that New York's Disability Benefits Law requires employers to pay employees disabled from working because of nonoccupational injuries or illnesses "the lesser of $95 per week or one-half their average weekly wage"). As both the Equity Amendment Act and the Connecticut law construed in *Donnelley* recognize, health insurance is an important component of an employee's compensation package, a component that should not be lost whenever an employee suffers a disabling work-related injury.[10]

[10] The Connecticut workers' compensation statute at issue in *Donnelley* was explicit on this point. Conn. Gen. Stat. § 31-275(14) (1989) defined "income" for purposes of the statute as "all forms of remuneration to an individual from his employment, including wages, accident and health insurance coverage, life insurance and employee welfare plan contributions."

In short, under *Shaw*, the Equity Amendment Act is valid. It is valid, moreover, whether or not it "relates to" ERISA-covered plans in the manner identified by the court below. Because the Act permits employers to comply with it by establishing a plan separate from their ERISA-covered plans, *Shaw* makes clear that it is not preempted.

III. THIS COURT SHOULD REJECT THE DEFINITION OF "RELATE TO" ADOPTED BY THE COURT BELOW TO ENSURE THAT THIS CONCEPT IS NOT CONSTRUED SO BROADLY THAT VALID STATE LAWS ARE PREEMPTED.

This Court should reverse the decision of the court below on the ground that, even if the Equity Amendment Act "relates to" ERISA-covered plans in the manner identified by that court, it is nevertheless not preempted under *Shaw* because employers may establish a plan solely for the purpose of complying with the Act. However, for the reasons already set forth and for the reasons that follow, this Court should also rule that the Act does not "relate to" ERISA-covered plans for the reason given by the court below in order to prevent courts in the future from ruling preempted other valid state laws.

A. The Court Below Defined "Relate To" Too Broadly.

The decision of the court below is bizarre. Based on its understanding of *Shaw*, the court has ruled preempted a clear, easily administered workers' compensation law that does not require employers to modify their ERISA-covered plans in any respect. According to that court, the Equity Amendment Act is preempted because it sets workers' compensation benefits by reference to benefits provided for active workers by ERISA-covered plans and thus fatally "relates to" ERISA-covered plans. Also based on its understanding of *Shaw*, the court would uphold a more complex and less easily administered workers' compensation law on the grounds that it does not "relate to" ERISA-covered plans.

This decision bears no relationship to any of the concerns that prompted ERISA. Furthermore, both *Shaw* itself, as well as this Court's other ERISA jurisprudence, support defining this concept more narrowly than did the court below. A more narrowly defined concept is necessary to reflect the principles of federalism that ordinarily inform this Court's judgment in preemption cases and to account for the language, structure, and purposes of ERISA itself. A state law should not be held to "relate to" ERISA-covered plans merely because the law expressly refers to benefits provided by such plans in setting benefits to be provided pursuant to the state law.

The District of Columbia proposes the following definition. A state law should be said to "relate to" ERISA-covered plans only if: (1) it deals "with the subject matters covered by ERISA — reporting, disclosure, fiduciary responsibility, and the like;" (2) it affects the content or administration of ERISA-covered employee benefit plans in a manner that offends the language or purposes of ERISA;[11] or (3) it conflicts with other provisions of ERISA, such as its exclusive enforcement scheme. *Shaw v. Delta Air Lines, Inc.*, *supra*, 463 U.S. at 98. Under this more precise definition, the Equity Amendment Act would not "relate to" ERISA-covered plans within the meaning of section 514(a) because it sets workers' compensation benefits based on the level of benefits provided in ERISA-covered plans to active workers. Furthermore, this result is consistent with the results and holdings of this Court's ERISA preemption cases. This Court

[11] The qualification — "in a manner that offends the language or purposes of ERISA" — is necessary to prevent employers from adding provisions to their ERISA-covered plans in order to exempt themselves from valid state laws. As the Eighth Circuit has stated "if negation of a plan provision was the standard for ERISA preemption, parties could avoid any state law by including a contrary provision in an ERISA plan." *Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp., Inc.*, 947 F.2d 1341, 1345 (8th Cir. 1991), *cert. denied*, No. 91-1631 (June 1, 1992).

has *never held* that a state law "relates to" ERISA-covered plans and is thus preempted because employee benefits that a state may otherwise validly require are set by reference to benefits provided in ERISA-covered plans.

B. This Court's Previous Analysis.

1. *Preemption Principles.* This Court has made clear that, even in ERISA cases, "the exercise of federal supremacy is not lightly to be presumed" and that "[p]re-emption of state law by federal statute or regulation is not favored in the absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981) (internal quotation marks omitted). In addition, it has ruled that courts "must presume that Congress did not intend to pre-empt areas of traditional state regulation." *Metropolitan Life Insurance Co. v. Massachusetts*, *supra*, 471 U.S. at 740. *Accord FMC Corp. v. Holliday*, 111 S. Ct. 403, 410 (1990) (there is a "presumption that Congress does not intend to pre-empt areas of traditional state regulation"). Preemption of state laws by ERISA must thus be measured against the scope of the federal concern in ERISA and the clarity of Congress' intent to displace state law. More precisely, as this Court stated in *Massachusetts v. Morash*, 490 U.S. 107 (1989), " 'in expounding' " ERISA, it is " 'not . . . guided by a single sentence or member of a sentence, but look[s] to the provisions of the whole law, and to its object and policy.' " *Id.* at 115, quoting *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 51 (1987).

2. *ERISA's Object and Policy.* "ERISA was passed by Congress in 1974 to safeguard employees from the abuse and mismanagement of funds that had been accumulated to finance various types of employee benefits." *Massachusetts v. Morash*, *supra*, 490 U.S. at 112. It was also passed to ensure that employers made good on their promises of

employee benefits. *Pilot Life Insurance Co. v. Dedeaux*, *supra*, 481 U.S. at 52-55. To achieve these goals, Congress imposed on designated employee benefit plans federal standards governing matters such as reporting, disclosure, and fiduciary responsibility, and it created a comprehensive enforcement scheme. In addition, in "a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans," Congress relieved employers of potentially conflicting and inconsistent state regulation of ERISA-covered employee benefit plans by preempting, with certain exceptions, state laws relating to such plans. *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478, 485 (1990), quoting *Pilot Life Insurance Co. v. Dedeaux*, *supra*, 481 U.S. at 54.

3. *Shaw and "Relate To."* In *Shaw*, this Court stated that, "in the normal sense of the phrase," the concept "relates to" means having "a connection with or reference to such a plan." 463 U.S. at 97. In *Shaw*, this Court also stated: "Some state actions may affect [ERISA-covered] employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.* at 100 n.21. Given the facts of *Shaw*, however, this Court "express[ed] no views about where it would be appropriate to draw the line." *Id.*

Although declining to draw a definitive line, this Court in *Shaw* rejected arguments that section 514(a)'s preemption language should be interpreted "to pre-empt *only* state laws specifically designed to affect employee benefit plans" governed by ERISA *or* "*only* state laws dealing with the subject matters covered by ERISA . . .." *Id.* at 98 (emphasis added). It based these determinations primarily on the modification of the language originally contained in what became section 514(a) and on other legislative history.

As this Court observed in *Shaw*, Congress did alter the language originally proposed for ERISA's preemption provision:

> The bill that became ERISA originally contained a limited pre-emption clause, applicable only to state laws relating to the specific subjects covered by ERISA. The Conference Committee rejected these provisions in favor of the present language, and indicated that the section's pre-emptive scope was as broad as its language.

Id. (footnote omitted). Furthermore, as this Court also observed in *Shaw*, the bill's sponsors in both the House and the Senate suggested an interpretation of the preemption provision broader than that limited to the specific subjects regulated by ERISA. Representative Dent, for example, spoke of " 'the reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans,' " but, as this Court noted, he followed this description by stating: " 'With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation.' " *Id.* at 99, quoting 120 Cong. Rec. 29197 (1974).[12] Similarly, this Court quoted Senator Williams as follows:

> "It should be stressed that with the narrow exceptions specified in the bill, *the substantive and enforcement provisions* of the conference substitute *are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.*"

Id. at 99, quoting 120 Cong. Rec. 29933 (1974) (emphasis added).

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[12] Certainly, Representative Dent could not have meant to describe the ERISA preemption provision by what he said in the first sentence quoted above, in view of the fact that Congress expressly preserved to the States the power to regulate employee benefit plans pursuant to the laws referenced in section 4(b)(3).

4. *Reexamination of Shaw's Sources in Light of the Decision Below.* When the sources of *Shaw* are reexamined in light of the decision below, they support a definition of "relate to" narrower than the wooden and overbroad definition adopted by the court below and broader than the two too-narrow alternatives this Court properly rejected in *Shaw*. As noted, this Court in *Shaw* rejected arguments that section 514(a)'s preemption language should be interpreted "to pre-empt *only* state laws specifically designed to affect employee benefit plans" governed by ERISA *or* "*only* state laws dealing with the subject matters covered by ERISA . . .. *Shaw v. Delta Air Lines, Inc., supra*, 463 U.S. at 98 (emphasis added). Under the District's proposed definition, however, ERISA's preemptive scope would be broader than the alternatives rejected by this Court in *Shaw*. Thus, a state law would "relate to" ERISA-covered plans not only if it deals with "the subject matters covered by ERISA," but also if it affects the content or administration of ERISA-covered employee benefit plans in a manner that offends the language or purposes of ERISA or if it conflicts with other provisions of ERISA, such as its exclusive enforcement scheme. This middle ground protects the federal concerns that prompted ERISA regulation of employee benefit plans; eliminates the threat of inconsistent non-federal regulation of ERISA-covered plans; preserves the exclusivity of ERISA's comprehensive enforcement scheme; and strikes a proper balance between those considerations and Congress' plain purpose not to displace unnecessarily traditional and legitimate exercises of state power and authority.

Neither the alteration of the language of the preemption provision nor the other legislative history supports the definition of "relate to" adopted by the court below. The modification of the language of the preemption provision tells us only that Congress intended federal preemption to extend beyond state laws "relating to the specific subjects covered by ERISA," such as disclosure and reporting. *Id.* at 98. This

modification does not, however, definitively indicate what Congress intended to preempt in addition to such state laws.[13]

Furthermore, the statements of the bill's sponsors, which speak of federal regulation of employee benefit plans, of how "the substantive and enforcement provisions" of ERISA "are intended to preempt the field," and of the need to eliminate "conflicting or inconsistent State and local regulation of employee benefit plans," do not permit the conclusion that Congress "unmistakably . . . ordained" preemption of any and all state laws, unless expressly exempted from preemption, that have some reference to or connection with ERISA-covered employee benefit plans. *Alessi v. Raybestos-Manhattan, Inc., supra*, 451 U.S. at 552.

To ascertain the meaning of "relate to any employee benefit plan" covered by ERISA, this language must be read in the context of the federal regulation imposed on designated employee benefit plans, of Congress' stated purpose to eliminate "inconsistent State and local regulation of employee benefit plans" covered by ERISA, and ERISA's comprehensive enforcement scheme. When this language is read in this way, it cannot be said, as the court below ruled, that the Equity Amendment Act "relates to" ERISA-

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[13] The original preemption language in the House and Senate bills was set forth by the Court in *Shaw*. The House bill "provided that ERISA would supersede state laws 'relat[ing] to the reporting and disclosure responsibilities, and fiduciary responsibilities, of persons acting on behalf of any employee benefit plan . . ..' " 463 U.S. 98 n.18, quoting H.R. 2, 93d Cong., 2d Sess., § 514(a) (1974) (brackets supplied by Court). The bill that initially passed the Senate "provided for pre-emption of state laws 'relat[ing] to the subject matters regulated by this Act or the Welfare and Pensions Plans Disclosure Act.' " *Id.*, quoting H.R. 2, 93d Cong., 2d Sess., § 699(a) (1974) (brackets supplied by Court).

Both bills, therefore, contained very narrow preemptive language. This language would not have preempted all state laws that conflicted with ERISA's objects and purposes, as does the District's proposed test.

covered employee benefit plans simply because the workers' compensation benefits it requires are set by reference to benefits provided in such plans.

The manner in which the Act sets workers' compensation benefits does not impose on ERISA-covered plans any of the requirements mandated by ERISA itself; it does not require employers to alter their ERISA-covered plans, as this Court prohibited in *Shaw*; and it does not regulate, or provide an enforcement mechanism for, any aspect of such plans. Employers remain free to alter and administer their voluntary plans in any way they deem fit consistent with ERISA itself. Accordingly, the manner in which the Equity Amendment Act establishes workers' compensation benefits, does not implicate any of ERISA's federal concerns and thus does not "relate to" ERISA-covered plans.

C. A Definition Of "Relate To" Narrower Than That Adopted By The Court Below Is More Consistent With This Court's Holdings In Its ERISA Cases.

The definition of "relate to" advanced here is more consistent with this Court's other ERISA jurisprudence than is the definition adopted by the court below. It would permit a finding of "relate to" whenever a state law dealt with the subject matters regulated by ERISA, affected the content or administration of ERISA-covered plans in a manner that offends the language or purposes of ERISA, or conflicts with other provisions of ERISA, such as its exclusive enforcement scheme. It would not permit a finding of "relate to" because a state law referred to benefits provided by ERISA-covered plans in establishing eligibility for benefits that a state may properly require, or in setting the level of benefits to be paid under the state law.

In *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), for example, this Court held not preempted a state statute requiring employers to provide one-time severance payments to employees in the event of a plant closing. It did so even

though the statute expressly exempted employers who had established ERISA-covered employee benefit plans that included severance pay[14] and even though the statute could have an impact on employer decisions to provide severance pay.[15] *Fort Halifax* therefore supports the proposition that a state law which establishes eligibility for employee benefits by reference to benefits in ERISA-covered plans is not necessarily "related to" ERISA-covered plans or preempted.

This Court's decision in *Mackey v. Lanier Collection Agency & Service, Inc.*, 468 U.S. 825 (1988), is not to the contrary. In *Mackey*, this Court held that ERISA preempted on two grounds an express exception from a general state garnishment statute for ERISA-covered employee welfare benefit plans. One ground was that the exception "related to" ERISA-covered plans. The exception not only expressly referred to such plans, but also singled out these plans for special treatment. By contrast, the Equity Amendment Act applies to District *employers* and it requires payment of insurance benefits for injured workers by all employers who provide such benefits to active workers, including employers whose plans for active workers are *exempt from ERISA*.[16]

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[14] This Court previously had affirmed decisions holding that even an employee benefit plan that pays severance benefits out of general assets is an ERISA-covered plan. See *Holland v. Burlington Industries, Inc.*, 772 F.2d 1140 (4th Cir. 1985), *summarily aff'd sub nom., Brooks v. Burlington Industries, Inc.*, 477 U.S. 901 (1986); *Gilbert v. Burlington Industries, Inc.*, 765 F.2d 320 (2d Cir. 1985), *summarily aff'd sub nom., Roberts v. Burlington Industries, Inc.*, 477 U.S. 901 (1986).

[15] The state law may have provided an incentive to employers to include in their ERISA-covered plans severance benefits, albeit benefits inferior to those required by state law, in order to avoid paying the benefits that would otherwise be required by state law.

[16] Although this aspect of *Mackey* is distinguishable from this case, the District believes that it may be erroneous and that the statutory exception in *Mackey* did not "relate to" ERISA-covered plans simply because it expressly singled out such plans for special treatment. One

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The definition of "relate to" proposed by the District would not, moreover, render valid any other state law previously found by this Court to be preempted, whether the state law is of a type referenced in sections 4(b)(3) or 514(b) of ERISA, or one not singled out for special treatment by ERISA. In the case of *Shaw*, ERISA would still preclude states from requiring employers to alter their ERISA-covered plans to provide the benefits mandated by state law.[17] Nor would the result in *Alessi v. Raybestos-Manhattan, Inc.*, *supra*, be different. *Alessi* involved a state workers' compensation statute forbidding employers from integrating employee benefits payable pursuant to ERISA-covered pension plans with employee benefits payable pursuant to workers' compensation laws. That state statute precluded ERISA-covered employee benefits plans from calculating the benefits payable by the plans in the manner specified in the

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way of illustrating this point is to assume a state garnishment statute which expressly lists the types of funds subject to garnishment, and includes ERISA-covered employee welfare benefit plans, but excludes other types of funds. The District does not believe that this Court would have held the provision referencing ERISA-covered plans preempted and thus have freed such plans from the statute. As a consequence, the District believes that a sufficient "relationship to" ERISA-covered plans would be established only when one also takes into account the structure of ERISA. As this Court observed in *Mackey*, the structure of ERISA demonstrates a congressional intent not to exempt employee welfare plans from state garnishment statutes. 486 U.S. at 831-38. In contrast to the exception in *Mackey*, which conflicted with ERISA's purpose to permit garnishment of benefits plans, the District, as the court below acknowledged, may require employers to provide health insurance benefits as part of its workers' compensation law without conflicting with ERISA.

[17] See also *Stone & Webster Eng'g Corp. v. Ilsley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom., Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983) (holding preempted a state workers' compensation law that required employers to alter their ERISA-covered multibenefit plans to provide health insurance to injured workers).

plans, and thus plainly "related to" ERISA-covered plans even under the District's proposed definition.[18]

In the case of state insurance laws, this Court has issued two decisions, *Metropolitan Life Insurance Co. v. Massachusetts*, *supra*, and *FMC Corp. v. Holliday*, *supra*, ruling that the laws in question related to ERISA-covered employee benefit plans. The first case concerned a state insurance statute which required specified benefits to be included in general health insurance policies sold to state residents, and the second, a statute which prohibited insurers from exercising subrogation rights against their insureds who recovered damages in tort actions. Both statutes, insofar as they applied to ERISA-covered employee benefit plans, would "relate to" such plans even under the District's proposed definition. Both would affect the benefits that must be provided by such plans, the first directly and the second indirectly.[19]

Finally, the results of this Court's decisions not involving statutes singled out for special treatment by ERISA would not be changed by tailoring the definition of "relate

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[18] In addition, of course, the state statute conflicted with federal law permitting integration of such benefits and would be invalid for that reason alone.

[19] However, as *Metropolitan Life Insurance Co.* and *FMC Corp.* make clear, state insurance laws are not preempted simply because they relate to ERISA-covered employee benefit plans. Section 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), saves state insurance laws from preemption, subject to section 514(b)(2)(B)'s "deemer" clause, 29 U.S.C. § 514(b)(2)(B). The deemer clause provides that employee benefit plans may not be deemed to be insurers, a clause that requires an additional inquiry in the case of general state insurance laws — whether the employer with an employee benefit plan is self-insured or not. An employer who purchases insurance for its plan may properly be indirectly subject to an insurance law which governs the insurance company from which it purchases insurance. An employer, who self-insures, however, is not subject to the law because, under ERISA's deemer clause, its plan may not be deemed an insurer. *See FMC Corp. v. Holliday*, *supra*, 111 S. Ct. at 409-10; *Metropolitan Life Insurance Co. v. Massachusetts*, *supra*, 471 U.S. at 735 n.14, 747.

to" to conform more closely to the structure, purposes, and other provisions of ERISA. Thus, in *Pilot Life Insurance Co. v. Dedeaux*, *supra*, this Court ruled preempted state common law causes of action asserting improper processing of claims for benefits under an ERISA-covered employee benefit plan. In *Ingersoll-Rand Co. v. McClendon*, *supra*, this Court ruled that ERISA preempts state common law claims for wrongful discharge effected by an employer in order to prevent its employees from becoming vested under an ERISA-covered pension benefit plan. Such supplemental state common law causes of action conflict with ERISA's exclusive civil enforcement scheme governing ERISA plans and thus may be said to "relate to" such plans.[20]

CONCLUSION

The court below erred in two important respects. First, it erroneously failed to follow the two-step approach mandated by *Shaw* for determining whether a section 4(b)(3) law, such as a workers' compensation law, is preempted by ERISA. Under *Shaw*, such a law is not preempted, even if it "relates to" ERISA-covered plans, so long as it requires or permits employers to establish a plan solely for the purpose of complying with it. Second, the Court below erroneously defined "relate to" too broadly in light of the presumption against preemption of state laws, especially those governing areas of traditional state regulation; the language, structure, and purposes of ERISA; and the legislative history. This Court

[20] The result in *Standard Oil Co. v. Agsalud*, 633 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981), would also be unchanged, as would the results in the *Holland* and *Gilbert* cases cited *supra* at 33 n. 14. *Standard Oil* involved a state law requiring employers to provide their employees with a comprehensive health-care plan and thus directly regulated ERISA-covered employee welfare benefit plans. *Holland* and *Gilbert*, in turn, both ruled that employees must use ERISA's enforcement mechanism in seeking severance benefits provided by ERISA-covered plans and may not seek relief pursuant to state common law causes of action.

has never adopted such a broad definition of "relate to" and, as its decisions indicate, such a broad interpretation is not needed to protect the federal interests addressed by ERISA. What the interpretation of the court below does, therefore, is to deprive employees of state protections to which they are legitimately entitled even with ERISA and to preclude the States and the District from enacting legislation to promote their wholly legitimate local interests.

This Court should reverse the decision of the District of Columbia Circuit.

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